



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22-240; DA 22-662; FR ID 97781]

Class D FM Station Exemptions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Media Bureau (Bureau) of the Federal Communications Commission (Commission or FCC) adopts changes to its public inspection file rules to reinstate the text of an explanatory note that was inadvertently deleted from the Code of Federal Regulations. The note clarified that Class D FM stations, or stations whose programming is wholly “Instructional,” are exempt from the requirement to maintain issues and programs lists in their public inspection file. Reinstatement of this explanatory text will provide clarity to regulatees as to their public inspection file obligations.

DATES: Effective [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418-2721; Alexander Sanjenis, Assistant Division Chief, Media Bureau, Audio Division, (202) 418-2779.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau’s Order (Order), MB Docket No. 22-240; DA 22-662, adopted and released on June 22, 2022. The full text of this document will be available via the FCC’s Electronic Comment Filing System (ECFS), <https://www.fcc.gov/cgb/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (braille, large print, electronic files, audio format), by sending an e-mail to fcc504@fcc.gov or calling the Commission’s Consumer and Governmental Affairs Bureau at

(202) 418-0530 (voice), (202) 418-0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This document does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, see 44 U.S.C. 3507.

Therefore, it does not contain any new or modified information collection burdens for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Bureau will send a copy of this Order to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Synopsis

1. *Introduction.* In this Order, the Bureau re-codifies clarifying language from a Note that was inadvertently eliminated from § 73.3527 of the Commission's rules (Rules) relating to the online public inspection file obligations of applicants, permittees, or licensees whose existing or prospective facilities are Class D FM stations or whose programming is wholly "Instructional" (referred to collectively herein as "Class D FM stations"). We re-codify the language as text in our Rules to conform to the publishing conventions of the National Archives and Records Administration's Office of the Federal Register. This amendment to the Rules does not change any regulatory obligations. Instead, § 73.3527 will more accurately state the entities to which it applies, eliminating potential confusion among Class D FM stations.

2. Section 73.3527 outlines the online public inspection file obligations of noncommercial educational stations. Section 73.3527(e)(8) states that "nonexempt noncommercial education broadcast stations" are required to maintain in their online public inspection files a quarterly "list of programs that have provided the station's most significant treatment of community issues during the preceding three month period." However, the Rule does not define "nonexempt" or provide any explanation of which stations are exempt from this

requirement.

3. Prior to the adoption of § 73.3527, the Commission had clarified that Class D FM stations are exempt from the requirement that stations maintain in their public files a list of programs addressing problems in the station's community, FCC 76-234, 41 FR 12424-01 (Mar. 25, 1976) (1976 R&O). Although the Commission required that NCE stations place in their public files such lists, the Commission codified in a Note to its Rules that "[e]xempt licensees include those offering wholly instructional programming and those operating under Class D, 10-watt authorizations." In 1984, the Commission revisited the requirement for stations to maintain issues/programs lists, FCC 84-294, 49 FR 33658-01 (Aug. 24, 1984) (1984 R&O). The 1984 R&O again noted that Class D FM stations are exempt from the issues/programs lists requirements due to the limited nature of the service they provide. Although the Commission's order highlighted the exemption for Class D FM stations, the actual text of the new § 73.3527 inadvertently omitted that exemption.

4. Subsequently, the Mass Media Bureau issued an order in 1985 noting that the exemption was inadvertently omitted from the text of § 73.3527 but that Class D FM stations remained exempt from the requirement to maintain program lists (1985 Bureau Order). Accordingly, a Note 2 to § 73.3527 was added: "For purposes of paragraph (a)(7) of this section, exempt applicants, permittees or licensees include those whose existing or prospective facilities are Class D FM stations or whose programming is wholly 'Instructional'" (Class D Note). This revised version of § 73.3527 was published in the *Federal Register* on March 4, 1985, 50 FR 8628-01 (Mar. 4, 1985). and appears in the Code of Federal Regulations (CFR) editions for 1985, 1986 and 1987.

5. In 1988, the Commission again adopted an order, FCC 88-52, 53 FR 15224 (Apr. 28, 1988), revising the retention of issues/programs lists in § 73.3527(a)(7) (1988 Order). The 1988 Order revised the rule to make it consistent with a change made to the companion rule for

commercial stations. The 1987 NPRM that preceded that order did not propose any change to the Class D exemption; nor did the 1988 Order discuss any such change. However, the Class D Note did not appear in the 1988 edition of the CFR, nor in any subsequent edition.

6. Compounding the confusion created by the apparent inadvertent deletion of the Class D Note following the 1988 Order, the Bureau issued a Forfeiture Order in 2009, DA 09-590, (UMW) where it specifically rejected an argument that Class D FM stations are exempt from the issues/programs list requirement of § 73.3527. Although UMW correctly states that the Commission did indeed make Class D FM stations exempt in the 1976 R&O, it incorrectly held that the Commission did not intend to continue that exemption in effect when it adopted § 73.3527. UMW did not address the 1985 Bureau Order, which clarified that Class D FM stations are exempt from § 73.3527, nor did it explain what stations are considered exempt from the issues/programs list requirement.

7. *Discussion.* We find that the omission of the Class D Note from the 1988 Order and subsequent editions of the CFR was an inadvertent one, unrelated to the proposal addressed in that order, and re-codify the exemption that relieves Class D FM stations from the requirement to maintain issues/programs lists in their online public inspection file. In reaching this determination, we are guided by the fact that the Commission never proposed to issue, and never issued, an order rescinding the Class D Note, or otherwise deleting the Class D Note from § 73.3527. Our reinstatement of the exemption is consistent with the holdings in the 1976 R&O and 1984 R&O—as clarified by the 1985 Bureau Order—that Class D FM stations should be exempt from the issues/programs list requirement. Accordingly, to provide clarity to Class D FM stations and to conform to the publishing conventions of the National Archives and Records Administration’s Office of the Federal Register, we amend § 73.3527(e)(8) as set out in the Appendix by including the text of the Class D Note.

8. We find that notice and comment procedures are unnecessary under the good

cause exception of the Administrative Procedure Act because re-codifying the inadvertently deleted text of the deleted Class D Note merely restores an exemption to § 73.3527 that the Commission established and has never sought to change in subsequent rulemaking actions. Consequently, we find notice and comment procedures are unnecessary for this action.

9. Finally, we disavow the Bureau's holding in UMW. As discussed above, the 1985 Bureau Order clearly states that Class D FM stations were meant to be exempted from the issues/programs lists requirement of § 73.3527, and no subsequent Commission decision changed that requirement. The removal of the Class D Note from § 73.3527 was not done pursuant to a Commission action, but rather through apparent inadvertence. Therefore, that exemption is still valid, and UMW provides an example of the importance of reflecting this exemption within the text of § 73.3527(e)(8).

PROCEDURAL MATTERS

10. *Regulatory Flexibility Analysis.* Because these rule changes are being adopted without notice and comment, the Regulatory Flexibility Act does not apply. See 5 U.S.C. 601(2).

11. *Paperwork Reduction Act Analysis.* The document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any new or modified information collection burdens for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198. See 44 U.S.C. 3506(c)(4).

12. *Congressional Review Act.* The Media Bureau has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. 804(2). The Media Bureau will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, the Order IS ADOPTED and WILL BECOME EFFECTIVE 30 days after publication in the Federal Register.

14. IT IS FURTHER ORDERED that part 73 of the Commission's rules IS AMENDED as set forth in the Final Rules, effective as of thirty (30) days after the date of publication in the Federal Register.

15. IT IS FURTHER ORDERED that the Media Bureau SHALL SEND a copy of the Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

16. IT IS FURTHER ORDERED that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 22-240 SHALL BE TERMINATED and its docket CLOSED.

List of Subjects in 47 CFR Part 73

Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

FEDERAL COMMUNICATIONS COMMISSION

Thomas Horan
Chief of Staff, Media Bureau

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. Amend § 73.3527 by revising the last sentence of paragraph (e)(8) to read as follows:

§ 73.3527 Online public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(8) * * * For the purposes of this section, exempt applicants, permittees, or licensees include those whose existing or prospective facilities are Class D FM stations or whose programming is wholly “Instructional.”

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